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STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL  
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IN RE:

APPLICATION OF NEW CINGULAR WIRELESS  
PCS, LLC (AT&T) FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND  
PUBLIC NEED FOR THE CONSTRUCTION,  
MAINTENANCE AND OPERATION OF A  
TELECOMMUNICATIONS TOWER FACILITY  
AT ST. MATTHEW LUTHERAN CHURCH AT  
224 LOVELY STREET IN THE TOWN OF AVON

DOCKET 373

August 14, 2009

**PROPOSED FINDINGS OF FACT AND MEMORANDUM OF  
PETER EMMETT WIESE**

I

PROCEDURAL HISTORY

On January 9, 2009 AT&T filed an application for a Certificate of Environmental Compatibility and Public need for the construction of a cell phone tower at St. Matthew Lutheran Church at 224 Lovely Street Avon, Connecticut ("Application") Thereafter a number of individuals and one other cell phone carrier, Pocket Communications ("Pocket"), became parties and interveners. The hearing was held on the application on March 31, 2009, April 29, 2009 and July 7, 2009. At the hearing the parties and interveners provided sworn testimony and exhibits. Thereafter the Connecticut Siting Council ("Council") instructed the parties and interveners to file post hearing proposed findings of fact and conclusion of law. The respondent files this memorandum in accordance with that order.

## II

### PROPOSED FINDINGS OF FACTS

Based upon the credible evidence presented the respondent respectfully submits that the Council can make the following findings of fact:

1. St. Matthew Lutheran Church (“church”) is located at 224 Lovely St. It is situated on the corner of Lovely Street, Route 177, and Greenwood Drive, a cul de sac. There are five homes on this street.
2. Peter Emmet Wiese resides in a single family dwelling located at 240 Lovely Street, Avon, CT. He has lived in this home since 1979. Prior to this time he lived at his parent’s home at 270 Lovely Street since his birth in 1952. The church property was previously owned by his great grandparents and thereafter his great uncle. Consequently he is very familiar with that site. His property is situated on the corner of Lovely Street and Greenwood Drive and is an abutting property to the church.
3. Juan and Olga Fernandez reside at 246 Lovely Street. They have lived in that home for 20 years. The property is located south of the Church and abuts the Wiese property.

4. Mark and Sheridan Toomey reside at 9 Greenwood Drive with their young children. They are abutting property owners to the church.
5. June Garrett resides at 15 Greenwood Drive. She is an abutting property owner to the church.
6. Thomas and Patricia McMahon reside at 21 Greenwood Drive. They have lived in that home for many years. They are abutting property owners to the church.
7. All of the aforementioned homeowners first learned about the proposed cell phone tower when they received a certified letter dated December 23, 2008 from the attorney for AT&T. In the letter all were advised AT&T proposed to construct a "100-foot-self-supporting monopole tower, antennas and 50' x 50' fenced equipment compound designed to accommodate unmanned equipment in a single-story equipment building or on concrete pads." None of the aforementioned homeowners were consulted during the site selection or the design phases of the project.
8. The application refers to the church property as a 5 ¼ acre parcel, but much of this land is already developed with the church, parsonage, fenced in playground and parking areas. The designated site for the tower is not to the rear or center of the undeveloped portion of the property. Rather it is close to the back of the

church, playground and adjacent to the parking lot on the south side of the property. This is an area that is used on a daily basis by individuals that participate in many activities which take place in the church. It is also utilized by the children in the neighborhood. In the event of a structural failure of the tower, persons and their property are at risk of injury. The placement of the tower, at this location on the property greatly increases its visibility in the neighborhood.

9. The church is located in an R-30 residential zone. The houses in the area can best be described as modest, approximately 2,000 square-foot, single-family dwellings. A church in a residential neighborhood represents a special exception under the zoning laws. The placement of a 10-story, metal structure with a 2,500 square foot footprint will have a significant adverse impact upon the neighborhood. Its presence will be overwhelming and intrusive. Its stature is more appropriate for an industrial or commercial zone. The proposed site is relatively small and cannot support such a massive and visible structure. It will adversely affect property values and the character of the neighborhood and the peaceful enjoyment of the Wiese residence.

10. The proposed tower will be located approximately 250 feet from the northeast corner of the Wiese property and will be clearly visible. There are 39 residential dwellings within a 1,000 foot radius of the proposed tower. The nearest private residential dwelling to the proposed tower is a mere 238 feet away at 21 Greenwood Drive. (McMahon property) The home located at 18 Greenwood

Drive (Church parsonage) is approximately 65 feet from the proposed tower. The nearest landowner, Jane Garrett, 15 Greenwood Dr is 188.5 feet away from the proposed tower. (February 27, 2009 AT&T Interrogatory Responses, AT&T Exhibit 3)

11. In the January 9, 2009 application to the siting council AT&T represents in part that “[t]he visual impact of the proposed facility is not significant.” (p.9) “[T]he Town has reviewed the proposed Facility, offered its support and has required that space be made available for the municipal antennas.” (p.12.) “[W]e respectfully submit that the tower would be consistent with the Town’s overall planning and zoning objectives.” (p.14.) “As noted throughout this Application, the proposed tower at the Site was the subject of a number of discussions and communications with the Town. The site was identified in part as a result of initial consultations with the Town and subsequent correspondence has been supportive of this application. A Technical Report was filed with the town on October 11, 2008.” (p.15.) (AT&T Exhibit 1)

12. The Town of Avon opposes the construction of the tower at St. Matthew Lutheran Church. A number of public hearings have been held by both the Town Council and the Planning and Zoning Commission (PZC). The PZC studied the application and issued a report dated February 17, 2009. (Wiese Exhibit No. 1) The findings of the Commission are in stark contrast to the assertions of AT&T. “[T]he Commission believes that the proposed location, along with the type of

proposed construction, will result in adverse impacts to surrounding properties. This area is located in a single-family residential zoning district. The introduction of this tower in this location may result in diminished property values and quality of life for nearby property owners. AT&T's application to the Siting Council indicated consistency with the Avon Plan of Conservation and Development. However, it should be noted that this Plan does not encourage cell phone towers in any single-family residential zones." (Wiese Exhibit No. 1) The Town Manager in a letter dated March 11, 2009 informed the Siting Council that the Avon Town Council endorsed these PZC recommendations. The Town Manager also indicated that any prior written communications from town officials concerning the proposed tower were superseded. (Wiese Exhibit No. 2)

13. Representatives of AT&T attended a PZC meeting on November 18, 2008. The proposed tower was discussed at this meeting. The application to the Siting Council contains only a portion of the meeting minutes. (Tab 5) (AT&T Exhibit 1) A review of the entire meeting minutes reveals that the PCZ had many concerns about the proposal and was not supportive of it. (Wiese Exhibit No. 3)

14. The area to be served by the proposed tower is relatively small, approximately one square mile running along Lovely Street. There is cell phone service in the area when traveling south on Lovely street, service is lost in the vicinity of Craigmere Circle and regained at or near Country Club Road. Wiese has cell phone service in his home approximately 50% of the time. There is cell phone

service at the properties of St. Matthew Lutheran Church and Roaring Brook Elementary School. The neighborhoods have landline phone service.

15. The proposed tower is a 100 foot self-supporting monopole. At the top of the tower the town planned initially to install communication antennas which would extend the height an additional 10 to 20 feet. This is the height of a twelve story building, 238 feet from a two story, privately-owned, single family residence located at 21 Greenwood Drive. (McMahon residence)
  
16. AT&T plans to install up to 6 panel antennas on a platform at a height of 97 feet. This diameter is projected to be a minimum of 10 feet. At least two other carrier's antenna platforms are planned to be located below. The lowest is projected to be installed at a height of approximately 78 feet above ground. This will result in the top portion of the tower having a profile of approximately 10 feet by 30 feet. (AT&T Exhibit 1) The latest AT&T proposal is a stealth tree design. This design is not appropriate for the lightly wooded area such as the Church property because it would rise above the tree line and be silhouetted against the sky.
  
17. On January 8, 2009 Wiese met with Kevin Day, a representative of AT&T. During the meeting Day informed Wiese that a stealth tree design was the least desirable of all the alternatives. Day informed Wiese that flush mounted antennas would be adequate for the site.

18. As presently situated the proposed site would be clearly visible to the residents of Greenwood Drive. (Toomey Exhibits B, E, F, I, J, K; AT&T August 4, 2009 Post Hearing Submission Tab 4)
  
19. The church wants the proposed site because the congregation does not want to spoil its view of the back lawn of the church. (March 31, 2009 hearing transcript p. 105)
  
20. The proposed site will be visible from many residential neighborhoods within a one mile radius. The View Shed Analysis Map, Visual Resource Evaluation and the Visual Resource Evaluation Report and Interrogatory responses clearly demonstrate that the proposed tower will have an imposing presence. (Application p.9, AT&T's February 27, 2009 responses to the Council's prehearing interrogatories, AT&T Exhibits 1,3; AT&T August 4, 2009 Post Hearing Submission Tab 2)
  
21. The View Shed area would include a number of Connecticut Department of Environmental resources, and a Town of Avon historic structure located within  $\frac{3}{4}$  of a mile of the site. These include Briarcliff Club, Red Mountain Lane Open Space, Juniper Road Open Space, Horseguard State Park Scenic Reserve, Lofgren Road Open Space, Avon Land Trust (Route 177), Roaring Brook Elementary School, Huckleberry Hill Road Open Space and 361 Lovely Street. (Application

Tab 4: Visual Resource Evaluation Report; AT&T Exhibits 1,3; AT&T August 4, 2009 Post Hearing Submission Tab 2)

22. The visibility analysis proposed by AT&T's proffered expert, Ashley Bonavenia, is not a reliable indicator of the visual impact of the proposed tower for a number of reasons. First it is based upon an estimate not a reasonable degree of probability. Second this AT&T representative is not qualified to render the opinions expressed. Ms. Bonavenia demonstrated her lack of expertise when she expressed the opinion that there are either 66 acres in the square mile area studied or 2,000 acres. In fact there are 640 acres in a square mile. This lack of the basic knowledge is critical because it invalidates her "expert" conclusions about the visibility of the proposed tower at various distances. (July 7, 2009 hearing Transcript pp 190 et seq.) Third the conclusions expressed by Ms. Bonavenia significantly understate the visual impact of the proposed tower. Her opinion that the tower will be visible in less than 5% of the surrounding square mile is contrary to the view shed analysis studies presented to the Council (July 7, 2009 Hearing Transcript p. 192) The proposed tower will be visible from a large portion of the 640 acres.
23. The tower will not be hidden by the pine trees in the area for a number of reasons. First, the massive tower will be approximately 20-40 feet higher than any tree in the area. Second, the trees are old and have a limited life expectancy. Wiese recalls them from his childhood. There is no plan to replace on site vegetation

and it would take many years to grow a 60 foot high tree. In fact, AT&T's site plan requires the removal of a number of trees in the area.

24. The existing church steeple is approximately 65 feet in height. The tower will be 35 feet higher than the steeple and 55 feet higher with the Town of Avon's communication antennas. The tallest private resident in the neighborhood is located at 21 Greenwood Drive, the McMahon property. This residence is located 238 feet from the proposed tower and is approximately 26 feet in height. The remaining private residences are single story or Cape style homes. The AT&T application contains photo simulations which purport to depict the tower in relationship to the church steeple and trees. (Tab 4, Attachment C AT&T Exhibit 1) These photographs are not a fair and accurate representation of the tower. They show a tower which appears lower than the church steeple and slightly above the tree line with only one rack of antennas. The photographs contained in AT&T's March 24, 2009 interrogatory responses are similarly defective. (AT&T Exhibit 5) For example view 2, Option 3, a one hundred foot flag pole resembles a large smoke stack located a substantial distance from the Church.

At ground level the site would initially consist of a 50 foot by 50 foot compound enclosed by a wooden stockade fence. Within this compound AT&T would place a 49 foot by 49 foot chain link fence topped with barbed wire. A 12 foot by 20 foot equipment shelter would be constructed within this compound. The site plan indicates that the shelter would be higher than the stockade fence. As other providers install their antennas it is expected that they will construct

buildings and place generators within the compound. It is reasonable to expect that the facility will also include heating, air conditioning and ventilation equipment. (AT&T Exhibit 1) The June 2008 lease agreement permits the enlargement of the compound. The lease provides in part “[if] Tenant requires an additional portion of the Property...for such modification or upgrade, subject to Landlord’s approval, ...Landlord agrees to lease to Tenant the Additional Premises...” (Wiese Exhibit No. 4 para 2)

25. Motor vehicle access to the facility will come from the rear parking lot on the south side of the church facing Greenwood Drive on a 30 foot gravel road. Greenwood Drive, a cul-de-sac, will provide access to the parking area. The compound will contain equipment which will require electricity and fuel. This equipment is valuable and will require maintenance by the cell carrier’s employees. The maintenance work on the tower and equipment will bring increased motor vehicle traffic and noise to the neighborhood. AT&T has not submitted a plan to the Council which limits routine maintenance to reasonable hours and times.

26. Pursuant to the June 2008 lease agreement AT&T will have unrestricted access to the proposed site. The lease provides; “Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour per day, seven (7) day per week pedestrian and vehicular access to and over the Property, from an open and improved public road to the Premises”. (Wiese Exhibit No. 4 para 12) It will be a

Consultation with the Wildlife Division should not be substituted for site-specific surveys that may be required for environmental assessments. The

concludes by stating in relevant parts:

between April and September to determine the presence of the turtle. The letter

recommended that a herpetologist conduct a site survey during the months

(Application Tab 7 AT&T Exhibit 1) The DEP Wildlife Division has

special concern, Eastern Box turtle, is present in the vicinity of the church.

Protection (DEP) in a letter dated September 19, 2008 that a state species of

28. AT&T has been notified by the Connecticut Department of Environmental

degree. (July 7, 2009 Hearing Transcript pp.81 et. seq.)

designed tower would still negatively affect real estate values but to a lesser

tower will be depreciated in value by at least ten percent. A less offensively

other houses on Greenwood Drive. A home near or in view of the proposed

property value. It will have a similar adverse effect on the property values of the

27. The proposed cell phone tower will have a direct and adverse impact on Wise's

homeowner's life and scenic neighborhood.

The presence of the tower and compound will negatively affect the quality of the

square foot compound is significantly larger than any home in the neighborhood.

attractive opportunity for vandals and thieves. The initial footprint of the 2500

telecommunications equipment will pose public health and safety risks and be an

the church property. For the these reasons the nature of the structure and the

significant attraction to the many children who, on a daily basis, play on or near

- time of year when this work will take place will affect these species if they are present on the site when the work is scheduled. Please be advised that should state permits be required or should state involvement occur in some other fashion, specific restrictions or conditions relating to the species discussed above may apply. In this situation, additional evaluation of the proposal by the DFP Wildlife Division should be requested. If the proposed project has not been initiated within 6 months of this review, contact the NDDB for an updated review. (Id.)
29. The Eastern Box turtle has a strong presence on the Church and surrounding properties. AT&T has failed to conduct the recommended site survey. The individuals who completed the NEPA review are not qualified to express the opinions and conclusions in the required NEPA review. Lyle Torp is an Anthropologist and Christopher Sperling an Archeologist-Historian (March 24, 2009 AT&T response to Council interrogatories, second set, question 7 and Exhibit D, AT&T Exhibit 4). The March 7, 2009 site visit by Charles Annicelli does not satisfy requirements of the DFP. It was conducted when the species were in hibernation.
30. The construction of a tower in the church steeple either connected to the existing building or a free standing structure would lessen the adverse impact upon the residential community. The base of the tower could serve as a shelter for the ground equipment. This represents the most advantageous design alternative. AT&T has submitted an attractive steeple design for consideration. If this steeple were limited to 100 feet in height it would present a potential compromise to the present dispute. (August 4, 2009 AT&T Post Hearing Submission Tab 3)

31. The construction of a flag pole design tower without flag, painted brown or green in color would lessen some of the adverse impact upon the residential community. The town of Avon has agreed not to install its communication antennas on the structure. This represents the second most advantageous design alternative.
32. The construction of a wooden laminate pole with surface mounted antennas would lessen some of the adverse impact upon the residential community. This represents the third most advantageous design alternatives.
33. The construction of a monopole tower painted brown or green in color with surface mounted antennas would lessen some of the impact upon the residential community. This represents the forth most advantageous design alternative.
34. The construction of the proposed stealth tree design tower is totally inappropriate for the proposed site.
35. Only AT&T and Pocket have informed the Council that they wish to place antennas on the proposed site. A tower height of eighty feet would be acceptable to meet the needs of AT&T (March 24, 2009 AT&T response to Town of Avon interrogatories, AT&T Exhibit 5). Pocket has determined that there would not be a significant difference in cell phone reception if their antennas were placed at a height of 87 or 77 feet on a tower at the proposed location. Pocket would in all probability contract with AT&T to place its antennas at 77 feet. (July 7, 2009

Transcript pp 28-29, Testimony of Anthony Wells) Pocket can provide cell phone coverage to a substantial portion of the area at a height of 67 feet. (Id pp 16-17) Accordingly an 80 foot tall tower would accommodate these two carriers.

36. It is possible to move the site of the tower at the church from its currently proposed location the rear and center of the property. This would lessen the visual impact upon surrounding properties and remove a number of structures and the playground from the fall zone. (August 4, 2009, AT&T Post Hearing Submission Tab 2) Option 3 is the most appropriate site on the church property for the flag pole design. Option 2 is the most appropriate site for the church steeple design. If option 2 is selected for the steeple, the ground equipment could be placed underground or at the option 3 site.

37. All of the equipment located at the base of the tower can be placed underground. This represents the most desirable alternative. (July 7, 2009 Transcript, Testimony of Derek Creaser p 209 et seq.)

38. All of the equipment can be located in one building that is similar in construction to the existing church. (see generally July 7, 2009 Transcript, Testimony Derek Creaser p 209 et seq) This design currently exists at 82 Lovely Street Farmington, CT, a facility owned by AT&T. This is the second most desirable alternative.

42. In residential areas towers have been designed and constructed to minimize visual impact including: 82 Lovely Street, Farmington (residential) brown painted monopole with flush mounted antennas, all equipment located within a brick building; 2 School Street, Farmington (Church) church steeple; 61 Main Street, Farmington (Church) church steeple (January 9, 2009 Application tab 1, AT&T Exhibit 1)

41. Within the towns of Avon, Farmington and Simsbury towers have been constructed which are intended to minimize the visual impact. A number of these sites are far less sensitive to negative impact of a cell phone tower. These include 277 Huckleberry Hill Rd, Avon (town dump) wooden pole with flush mount antennas; 1 Westerberg Drive, Farmington (sewer plant) flag pole; 530 Bushy Hill Road, Simsbury (Simsbury Commons shopping plaza) flagpole. (January 9, 2009 Application tab 1, AT&T Exhibit 1)

40. The placement of appropriate plantings at the site will assist in diminishing the visual impact. These plantings should include rapidly growing trees to surround the tower. A landscape architect should be retained to prepare a design.

39. The use of diesel generators is not appropriate for the proposed site. Propane generators are the most acceptable alternative.

43. The use of a brown or green painted flag pole is more desirable than a monopole because it is less wind resistant and smaller in diameter. A flag pole is 28 inches in diameter. The monopole is 42 inches at the base, tapering to 26 inches at the top. (March 24, 2009 AT&T Interrogatory responses. Answers 16, 18 - AT&T Exhibit 5) The use of a flag pole will alleviate the need for an ice bridge at the base.

A. The Application should be denied.

It is respectfully submitted that there is substantial evidence in the record to support the finding that visual impact of the tower on the surrounding residential neighborhood requires a denial of the application.

Connecticut General Statutes § 16-50p provides in relevant part that:

The council shall not grant a certificate, either as proposed or as modified by the council unless it shall find and determine... (B) The nature of the probable environmental impact of the facility alone and cumulatively with other existing facilities, including a specification of every adverse effect, including, but not limited to, electromagnetic fields that, whether alone or cumulatively with other effects, on, and conflict with the policies of the state concerning the natural environment, ecological balance, public health and safety, scenic, historic, and recreational values, forests and parks, air and water purity and fish, aquaculture and wildlife; (C) Why the adverse effect or conflicts referred to in subparagraph (B) of this subdivision are not sufficient reason to deny the application...

(Emphasis supplied).

The proposed tower will have a direct and significant negative impact upon the value and enjoyment of my property. The maintenance work on the

DISCUSSION

tower and equipment will bring increased motor vehicle traffic and noise to the neighborhood. AT&T will have unlimited access to the site twenty four hours a day, seven days a week. The proposed structure and telecommunication equipment will present public health and safety risks. It will be an attractive opportunity for vandals and thieves.

The presence of the tower and compound in an R-30 residential neighborhood will negatively affect the quality of my life and our scenic neighborhood. There are 39 dwellings within a 1000 foot radius of the proposed tower. My property at 240 Lovely Street, Avon is approximately 250 feet from the site. The home located at 18 Greenwood Drive (church parsonage) is approximately 65 feet from the proposed tower. The nearest private residential dwelling is a mere 238 feet away at 21 Greenwood Drive. (McMahon property) The designated site for the tower is not to the rear or center of the undeveloped portion of the property. Rather it is placed to the rear and south side of the church property near Greenwood Drive. Even AT&T's faulty view shed analysis and photographs clearly demonstrate that it will be visible from a substantial portion of the residential neighborhood within a mile radius of the site.

The Town of Avon acting on behalf of approximately sixteen thousand residents opposes the application. Only AT&T, the church, and Pocket support the tower. There was not a single individual who testified in favor of the tower. There is currently cell phone service available within the small area to be served by the tower. The need to improve the service is outweighed by the

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<sup>1</sup> 150 foot tower, 3.85 acre site, 17 homes within 1000 feet, residential zone, 1.5 mile gap in coverage along Route 202.  
<sup>2</sup> 120 foot tower, 4.73 acre site, 17 homes within 1000 feet, restricted business zone, 4.1 mile gap in coverage alone Route 7 (denied without prejudice).  
<sup>3</sup> 150 foot tower, 5 acre site, 56 homes within 1000 feet, residential zone, coverage gap along Route 17, 150 and 22.  
<sup>4</sup> Proposed at the church a 100 or 120 foot tower, 5.5 acre site, 39 homes within 1000 feet, residential zone, 1 mile gap in coverage along Route 177.

B. The Proposed Tower and Site Location are Totally Inappropriate

negative consequences that will follow from the tower's construction. This includes the negative effects on a protected species, the Eastern Box Turtle. The Council has on numerous occasions which are similar to the present matter denied the proposed facilities; Docket No. 355 – Cellico Partnership d/b/a Verizon Wireless application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a telecommunications facility located at 700 Kent Road, New Milford, Connecticut<sup>2</sup>; Docket No. 269 – Site Acquisitions, Inc. d/b/a Metro Tower application for a Certificate of Environmental Compatibility and Public Need for the construction, maintenance and operation of a wireless telecommunications facility located at 80 Old Post Road, North Branford, Connecticut<sup>3</sup>

It is respectfully submitted that a consistent application of the regulatory power vested in the Council requires a denial of the present application.<sup>4</sup>

If the Council approves the application then it should order AT&T to design and construct a steeple like structure at a height not to exceed 100 feet. The steeple design recently submitted by AT&T is an attractive structure however there are many details about it that need to be addressed. These include site location and height. The structure should be placed in the middle portion of the rear of the property as depicted as option 2. (August 4, 2009 Post Hearing Submission) The on site equipment should be placed in an underground facility, at the base of the steeple, or the location identified as option 3. A landscape architect should be retained to design and construct an appropriate site plan to minimize the resulting negative visual impact. The church prefers the proposed site because the congregation does not want the tower to interfere with the view of the back lawn.

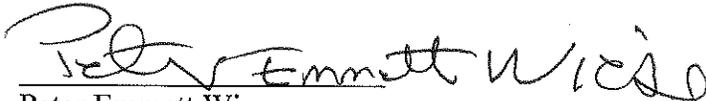
A second and less desirable alternative would be the construction of a flagless flag pole design painted brown or green in color. The placement of the pole would be at option 3. All equipment to be placed underground or in on building which is compatible with the existing brick church building.

A third choice and much less desirable alternative would be a wooden pole with surface mounted antennas located at option 3. The equipment located underground or in one building compatible with the existing brick church building. In all cases the use of diesel generators should be forbidden.

III

CONCLUSION

The respondent respectfully request that the application be denied. In the alternative any relief deemed appropriate by the Council.

  
Peter Emmett Wiese  
Peter Emmett Wiese

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been mailed to all parties of record.

  
Peter Emmett Wiese  
Peter Emmett Wiese